In the High Court of Judicature at Madras

Dated: 06/09/2002

Coram

The Honourable Mr. Justice A.K. RAJAN

Second Appeal No. 1061 of 1992
and
C.M.P. No. 10255 of 1992

1. Govindaraj

2. P. Chinnusamy ..... Appellants

-Vs-

M. Thangaraj ..... Respondent

Second appeal filed under Section 100 of Code Civil Procedure
against the judgment an decree dated 10.07.1990 made in A.S. No. 1 of 1989
on the file of the Subordinate Judge, Sankari, reversing he judgment and
decree dated 25.04.1988 made in O.S. No. 494 of 1985 on the file of the
District Munsif, Mettur.

!For appellants : Mrs. Uma Ramanathan
for M/s. Aiyar & Dolia

^For respondent Mr. M.N. Padmanabhan
Senior Counsel
for Mr. M.N.Muthukumaran

:O R D E R

The second appeal is filed by the unsuccessful plaintiffs.

2. The plaintiffs have filed the suit O. S. No. 494 of
1985 on the file of the District Munsif, Mettur for declaration and injunction
with respect to 9 cents in all in survey No.93.

3. The case of the plaintiffs are that the first plaintiff
was assigned 5 cents of land in Survey No. 93/1B and second plaintiff was
assigned 4 cents in Survey No. 93/1C. On this basis, the suit for
declaration has been filed.

4. The trial Court decreed the suit with respect to the first plaintiff on the basis of assignment of 5 cents of land but the first appellate Court reversed it on the ground that patta is not a document of title and in the absence of any proof of title to the property, declaration cannot be issued. Against the said judgment, the plaintiffs have come forward with this second appeal.

5. At the time of admission, the following

substantial questions of law are framed for consideration of the above second appeal:
1. Whether the assignment of patta issued by the Revenue authority in favour of the appellants herein with consequent delivery of the property described therein amounts to a document of possession or document of title?

2. If so, to what extent the said document can be relied on and that further in pursuance of the said document continued possession can be attributed for the purpose of deciding the rights of parties or not?

6. Learned counsel appearing for the appellants submitted that by assignment, five cents of lands were allotted to the first plaintiff and four cents to the second plaintiff and, therefore, they are entitled for declaration and injunction as prayed for and the judgment of the Courts below in dismissing their claim is not legally sustained.

7. Learned counsel for the respondent submitted that the plaintiffs have not proved their case at all. P.W.3 has stated that patta was originally issued in the name of the defendants for a total extent of 1.19 acres in Survey No. 93/1A. Survey Nos. 93/1B and 93/1C were sub divided and 5 cents and 4 cents were assigned to plaintiffs 1 and 2, respectively, without any notice to the defendants. Therefore, the Courts below are right in dismissing the suit.

8. From the evidence of P.W.3, it is seen that originally the patta stood in the name of the defendants to a total extent of 1.19 acres in Survey No. 93/1A. There was no sub division as 93/1B and 93/1C. Only on application made by the plaintiffs 1 and 2, the lands were sub divided as 93/1B and 93/1C and granted patta for 5 cents and 4 cents, respectively to plaintiffs 1 and respectively. But this was done without any notice to the defendants. Therefore, in so far as this sub division of survey number 93/1A into 93/1B and 93/1C concerned, it will not bind the defendants as it was done without notice to him. Further, the sub divisions made canceled subsequently as it was done without notice to the plaintiffs. Therefore, it appears that the Revenue authorities have granted patta and subsequently canceled the same, according to their whims and fancies. Grant of patta just because some persons applied for it without verifying the title of such persons is the reason for such litigation. Such callous attitude on the part of the revenue authorities must come to an end.

9. In so far as the present case is concerned, the case of

the plaintiffs is that they have got title to the properties only on the basis of patta and the evidence of P.W.3 would prove that patta has been cancelled. The plaintiffs have failed and the Courts below have rightly dismissed the suit; there is no reason to interfere with the judgments of the Courts below. Hence, the substantial question of law is answered against the appellants.

10. In the result, the second appeal is dismissed and the parties are directed to bear their own costs. Consequently connected C.M.P. Is also dismissed.

Index : Yes
Internet : Yes
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To
1) The Subordinate Judge, Sankari
2) The District Munsif, Mettur.